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**WTO APPELLATE BODY EXPANDS U.S. VICTORY IN CHALLENGE TO CANADA'S  
RESTRICTIONS ON U.S. MAGAZINE EXPORTS**

The Appellate Body of the World Trade Organization (WTO) has affirmed a finding of a dispute settlement panel that Canada's 80 percent excise tax on "split-run" magazines violates WTO trade rules. The rules are set out in the General Agreement on Tariffs and Trade (GATT 1994), one of the trade agreements administered by the WTO. In addition, the Appellate Body found that Canada's postal subsidy for domestic magazines also violates GATT 1994, reversing the panel's earlier decision.

"The Canadian magazine practices we challenged greatly restrict the ability of our industry to compete in Canada. We are gratified that all of these discriminatory measures have been found to violate GATT," said U.S. Trade Representative Charlene Barshefsky. "This case makes clear that WTO rules prevent governments from using 'culture' as a pretense for discriminating against imports. We look for prompt action by Canada to bring its magazine regime into compliance with its international obligations."

Canada had not appealed the panel's findings in favor of the United States that Canada's import ban on certain magazines and its discriminatory "commercial" postal rates violated GATT rules. These conclusions therefore stand.

The Appellate Body report will be circulated on today, Monday, June 30 to all WTO Members. The Appellate Body report, entitled *Canada -- Certain Measures Concerning Periodicals*, will be available for copying in USTR's public reading room.

## **Background**

On March 11, 1996, USTR initiated a section 301 investigation and requested consultations under GATT 1994 with the Government of Canada to address certain Canadian measures affecting magazines, including: measures prohibiting or restricting the importation into Canada of certain magazines, tax treatment of so-called “split-run” magazines, and the application of favorable postage rates to certain Canadian magazines. When the consultations failed to produce a mutually satisfactory solution, the United States requested that a WTO panel be formed to consider these issues. A panel was established on June 19, 1996. The panel’s interim report was issued to the two parties on January 16, 1997, its final report was issued to the two parties on February 21, and its final report was circulated to all WTO Members on March 14.

The United States initiated the section 301 investigation and requested consultation after Canada’s parliament imposed an 80% tax on revenue from advertisements placed in Canadian editions of so-called “split-run” magazines. Split-run magazines are periodicals sold both in Canada and abroad, in which the Canadian edition contains advertisements directed at a Canadian audience. The tax was calculated to put the Canadian edition of *Sports Illustrated*, published by Time Canada, Ltd., a subsidiary of Time Warner, Inc., out of business.

The tax is the latest in a series of Canadian measures to protect the Canadian magazine publishing industry from U.S. competition. For example, since the mid-1960's, Canada has banned the importation into Canada of magazines that contain even small amounts of advertising directed at Canadian consumers. And for many years Canada has charged higher postage rates for magazines not produced in Canada by Canadian-owned companies.

In its report, the panel found that:

- Canada’s import ban violates GATT Article XI, and is not justified as an exception under Article XX.
- Canada’s 80% excise tax violates Canada’s national treatment obligations under GATT Article III:2. The Panel found that the tax drew an artificial distinction between split-run and non-split-run magazines, which are “like products,” and applied the excise tax only to split-runs.
- Canada’s discriminatory postal rates for magazines mailed in Canada accord less favorable treatment to imported magazines than to like Canadian magazines, in violation of GATT Article III:4. However, the Panel found that this violation was excused in the case of Canada’s so-called “funded” postal rates, because these rates qualify as a subsidy within the meaning of GATT Article III:8(b).

Canada appealed the panel’s conclusion that its 80% excise tax violates GATT Article III:2. The United States contested Canada’s claims on appeal, and also appealed the panel’s conclusion that the “funded” postal rates qualify as subsidies under GATT Article III:8(b).

In its report, the Appellate Body rejected Canada’s claim regarding the excise tax, and affirmed the panel’s conclusion that the excise tax was inconsistent with Article III:2 of GATT 1994. With respect to the U.S. appeal on “funded” postal rates, the Appellate Body reversed the

decision of the panel and concluded that these postal rates do not constitute subsidies under Article III:8(b) of GATT 1994. The effect of this decision on Article III:8(b) is these postal rates have been determined to violate Article III:4 of GATT 1994.